



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 221219-0276]

RIN 0648-BK71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Spiny Lobster Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 1 under the Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John (collectively, the island-based FMPs) (Framework Amendment 1). If implemented, this proposed rule would modify annual catch limits (ACLs) for spiny lobster in the U.S. Caribbean exclusive economic zone (EEZ) off Puerto Rico, St. Croix, and St. Thomas and St. John. The proposed rule would also revise the accountability measure (AM) trigger for spiny lobster in the EEZ around each island group. The purpose of this proposed rule is to

update management reference points for spiny lobster under the island-based FMPs, consistent with the best scientific information available to prevent overfishing and achieve optimum yield (OY).

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2022-0104" by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2022-0104" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Sarah Stephenson, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Framework Amendment 1, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/generic-framework-amendment-1-modification-spiny-lobster-management-reference-points>.

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: sarah.stephenson@noaa.gov.

SUPPLEMENTARY INFORMATION: The Puerto Rico, St. Croix, and St. Thomas and St. John fisheries include spiny lobster, and are managed under the island-based FMPs. The island-based FMPs were prepared by the Caribbean Fishery Management Council (Council) and NMFS. NMFS implemented the island-based FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to

achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. For Puerto Rico and the U.S. Virgin Islands (USVI), the Council and NMFS manage fisheries under the island-based FMPs. NMFS published the final rule in the *Federal Register* to implement the island-based FMPs on September 13, 2022 (87 FR 56204). The island-based FMPs contain management measures applicable for Federal waters off the respective island group. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ.

The island-based FMPs establish status determination criteria (SDC) and other management reference points for all stocks and stock complexes included for Federal management, including spiny lobster, following a 3-step process. Step 1 adopts and applies a 4-tiered acceptable

biological catch (ABC) control rule to specify SDC and reference points depending on differing levels of data availability. Step 2 establishes a proxy for maximum sustainable yield (MSY) when fishing mortality cannot be determined. Step 3 applies a reduction factor to the ABC for each stock or stock complex to specify the ACL, reflecting the Council's estimate of management uncertainty. The OY is equal to the ACL for each stock or stock complex.

Under the ABC control rule, Tier 1 applies to stocks with the most data available, while each subsequent tier operates with less available data than the preceding tier. Tier 4, the final tier, is the most data limited and applies when no accepted quantitative assessment is available. Tier 4 introduces a new reference point, the sustainable yield level, which is determined under one of two sub-tiers, Tier 4a and Tier 4b, based on an understanding of the stock's vulnerability to fishing pressure. Tier 4a is less conservative and applies when the stock's vulnerability to fishing pressure is relatively low or moderate. Under each of the island-based FMPs, the SDC and other management reference points for spiny lobster are currently derived by applying the Tier 4a definitions using a period of stable and sustainable landings. For spiny lobster, only commercial landings data are collected.

Because recreational landings data are not available, the ACLs for spiny lobster are based on commercial landings and apply to all harvest for the stock, whether commercial or recreational.

In 2019, the Southeast Data, Assessment, and Review (SEDAR) completed separate stock assessments for spiny lobster in Puerto Rico, St. Croix, and St. Thomas and St. John (SEDAR 57), which were reviewed by the Council's Scientific and Statistical Committee (SSC) and determined to be suitable for management advice. Specifically, the SSC supported the stock assessments as providing the best scientific information available relative to the SDC of overfishing status and overfished status; accepted an MSY proxy of the fishing mortality rate (F) at 30 percent spawning potential ratio ($F_{30\%SPR}$); supported the outcome that overfishing is not occurring and that the populations are not overfished; and supported and recommended the use of the assessments to update the values for management reference points and SDC in the island-based FMPs using definitions in Tier 3 (data limited, accepted assessment available) of the Council's ABC control rule.

Under Tier 3 of the ABC control rule, if the biomass (B) of the stock falls below the minimum stock size threshold (MSST), which would be set equal to 75 percent of the long-term spawning stock biomass ($0.75 \times SSB_{MFMT}$) at the

maximum fishing mortality threshold (MFMT), the stock would be determined to be overfished; that is, if the ratio of B to MSST is less than 1. If NMFS determines the stock is overfished, the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. Additionally, under Tier 3, in years when there is a stock assessment, if F exceeds the MFMT, the stock is considered to be undergoing overfishing; that is, if the ratio of F to the MFMT is greater than 1. This level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, the stock is considered to be undergoing overfishing if landings exceed the overfishing limit (OFL).

Under Tier 3, the ABC is derived by reducing the OFL by the SSC's scientific uncertainty buffer (σ ; for spiny lobster stocks $\sigma = 1.0$) and reflecting the acceptable probability of overfishing determined by the Council (defined as P^* ; for spiny lobster stocks P^* equals 0.45). The ACL is then derived by reducing the ABC by the Council's management uncertainty buffer.

The Council requested that the SSC coordinate with the NMFS Southeast Fisheries Science Center (SEFSC) to provide recommended OFLs and ABCs for spiny lobster for each island group for years 2021 to 2023. At its February 2021 meeting,

the Council's SSC recommended both a variable-catch approach and a constant-catch approach for updating spiny lobster OFLs and ABCs for the period of 2021-2023 under each FMP. Under both approaches, the SSC recommended that the spiny lobster OFLs and ABCs for 2024 and subsequent fishing years be set equal to the OFL and ABC values specified for 2023 under the variable-catch approach. The Council requested that the SEFSC provide an interim assessment by 2023 to update OFL projections to allow catch levels to later be revised for subsequent fishing years in an expected future amendment to each of the island-based FMPs. Interim assessments are designed to occur between regular SEDAR assessments to determine trends in stock condition and project future catch advice.

Consistent with the SEDAR 57 stock assessment, and recommendations from the Council's SSC and the SEFSC, the Council developed Framework Amendment 1 to prevent overfishing of spiny lobster and achieve OY, consistent with the requirements of the Magnuson-Stevens Act. For each island-based FMP, the Council set constant-catch ACLs for spiny lobster for fishing years 2021-2023, and set ACLs for 2024 and later based on the ABCs specified for 2023 under the variable-catch approach. The ACLs are equal to 95 percent of the ABCs recommended by the SSC, which reflects the Council's management uncertainty buffer.

All weights described in this proposed rule are in round weight.

Management Measures Contained in this Proposed Rule

This proposed rule would revise the ACLs for spiny lobster in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John. This proposed rule would also revise the sequence of landings data used by NMFS to determine if an AM is triggered for, or needs be applied to, spiny lobster in the EEZ around each island group.

Annual catch limits

If implemented, this proposed rule would modify the spiny lobster ACLs in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John for the 2023 fishing year and the 2024 and subsequent fishing years.

For the Puerto Rico FMP, the ACL for spiny lobster would decrease from the current ACL of 527,232 lb (239,148.4 kg) to 369,313 lb (167,517 kg) for the 2023 fishing year, and then further decrease to 366,965 lb (166,452 kg) for the 2024 and subsequent fishing years.

For the St. Croix FMP, the ACL for spiny lobster would decrease from the current ACL of 197,528 lb (89,597.1 kg) to 140,667 lb (63,805 kg) for the 2023 fishing year, and then would further decrease to 120,830 lb (54,807 kg) for the 2024 and subsequent fishing years.

For the St. Thomas and St. John FMP, the ACL for spiny lobster would decrease from the current ACL of 209,210 lb (94,892 kg) to 142,636 lb (64,698 kg) for the 2023 fishing year, and then would further decrease to 126,089 lb (57,193 kg) for the 2024 and subsequent fishing years.

The updated management reference points, including the proposed ACL reductions, are expected to better protect against overfishing of the stock in relation to the current catch limits, thus ensuring, to the greatest extent practicable, continued access to the resource in future years.

NMFS notes that Framework Amendment 1 includes recommended ACLs for the 2021 and 2022 fishing years. However, as a result of delays associated with the final rule implementing the island-based FMPs, which needed to precede this rulemaking, and the time needed by NMFS to develop and implement this current rulemaking, this proposed rule does not include proposed spiny lobster ACLs for the 2021 and 2022 fishing years.

Accountability measures

Under each island-based FMP, the current AM for spiny lobster states that NMFS compares available landings of spiny lobster to the spiny lobster ACL based on a moving multi-year average of landings. In the first year following implementation of the island-based FMPs, NMFS compares a

single year of available landings to the ACL; in the second year following implementation, NMFS compares a single year of available landings to the ACL; in the third year following implementation, NMFS compares a 2-year average of available landings to the ACL; and in the fourth year following implementation, NMFS compares a 3-year average of available landings to the ACL. Thereafter, NMFS compares a progressive running 3-year average of available landings to the ACL. NMFS, in consultation with the Council, may deviate from the specific time sequences based on data availability.

Framework Amendment 1 and this proposed rule would revise how NMFS evaluates whether landings of spiny lobster around each island group have exceeded the ACL and trigger the AM. As described in Framework Amendment 1, NMFS would compare the average of the most recent 3 years of available spiny lobster landings to the average of the ACLs in effect during those same fishing years. An AM may be triggered if the average annual landings exceeded the average of the ACLs in effect during those same fishing years. The Council determined this process would better anticipate changes to the spiny lobster ACLs moving forward, following future stock assessments for spiny lobster.

Framework Amendment 1 also clarifies that if spiny lobster landings for a given year are available, but if

NMFS has concerns with the data reliability, e.g., concerns with expansion factors applied to reported landings, then NMFS may use different data years to compare to the ACL to determine if the AM has been triggered, consistent with the best scientific information available. The process for how NMFS would apply the timing of an AM during a fishing year remains as described in each of the island-based FMPs and the implementing final rule.

If NMFS determines that an ACL overage resulted from improved data collection or monitoring rather than from increased catch, the AM would not be triggered and NMFS would not reduce the length of the fishing season for spiny lobster.

Measures in Framework Amendment 1 not Codified in this Proposed Rule

In addition to the ACLs described in this proposed rule, Framework Amendment 1 specifies the MSY proxy, MFMT, and MSST for spiny lobster. Framework Amendment 1 also specifies the spiny lobster OFLs and ABCs for the 2021-2023 fishing years and for the 2024 and subsequent fishing years for Puerto Rico, St. Croix, and St. Thomas and St. John. However, as explained above, this proposed rule does not include spiny lobster management reference points for the 2021 and 2022 fishing years.

For the Puerto Rico FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 432,501 lb (196,179 kg), 0.197 ($F_{30\%SPR}$), and 84.8 billion eggs ($0.75 \times SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 440,803 lb (199,944 kg) for the 2023 fishing year, and then 438,001 lb (198,673 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 388,750 lb (176,334 kg) for the 2023 fishing year, and then 386,279 lb (175,213 kg) for the 2024 and subsequent fishing years.

For the St. Croix FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 127,742 lb (57,943 kg), 0.203 ($F_{30\%SPR}$), and 23 billion eggs ($0.75 \times SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 167,897 lb (76,156 kg) for the 2023 fishing year, and then 144,219 lb (65,416 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 148,071 lb (67,163 kg) for the 2023 fishing year, and then 127,189 lb (57,691 kg) for the 2024 and subsequent fishing years.

For the St. Thomas and St. John FMP, the MSY proxy, MFMT, and MSST for spiny lobster would be 133,601 lb (60,600 kg), 0.244 ($F_{30\%SPR}$), and 21.3 billion eggs ($0.75 \times SSB_{MFMT}$), respectively. The OFL for spiny lobster would be 170,247 lb (77,222 kg) for the 2023 fishing year, and then 150,497 lb (68,264 kg) for the 2024 and subsequent fishing years. The ABC for spiny lobster would be 150,143

lb (68,103 kg) for the 2023 fishing year, and then 132,725 lb (60,203 kg) for the 2024 and subsequent fishing years.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 1, the island-based FMPs for Puerto Rico, St. Croix, and St. Thomas and St. John, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A

description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The objective of this proposed rule and Framework Amendment 1 is to use the best scientific information available to update management reference points for spiny lobster under the each of island-based FMPs, based on the SEDAR 57 spiny lobster stock assessments and application of the Council's ABC Control Rule, and to revise the AM trigger for spiny lobster in the EEZ around each island group. All monetary estimates in the following analysis are in 2020 dollars.

This proposed rule, if implemented, would apply to all anglers (recreational fishermen) and commercial fishing businesses that harvest spiny lobster in the U.S. Caribbean EEZ off Puerto Rico, St. Croix, and St. Thomas and St. John. The RFA does not consider recreational anglers to be small entities, whether fishing from for-hire fishing, private, or leased vessels. Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5)). Recreational anglers are not businesses, organizations, or

governmental jurisdictions. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis, and only the impacts on commercial fishermen will be discussed.

Any commercial fisherman that operates a fishing vessel that lands spiny lobster harvested from Federal or state waters off Puerto Rico or the U.S. Virgin Islands must be commercially licensed to do so by the respective territorial government. Each licensed commercial fisherman represents a unique commercial fishing business. In 2016, 811 licensed commercial fishermen in Puerto Rico submitted catch reports. In 2019, 46.6 percent of active commercial fishermen reported landings of spiny lobster. Using the percentage of active commercial fishermen in 2019 who reported landings of spiny lobster and the number of active commercial fishermen prior to the 2017 hurricane season, which had disastrous impacts on Puerto Rico's commercial fishermen, NMFS estimates 378 commercial fishing businesses in Puerto Rico may be directly affected by the proposed rule. NMFS estimates that 81 (57.4 percent) of St. Croix's 141 licensed commercial fishermen and 35 (29.5 percent) of St. Thomas and St. John's 119 licensed commercial fishermen target spiny lobster. Therefore, up to 81 commercial fishing businesses in St. Croix and 35 in St. Thomas and St. John may harvest spiny lobster in the EEZ and may be

directly affected by the proposed rule.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. The Puerto Rico fishery and U.S. Virgin Islands fisheries as a whole are estimated to generate direct revenues of \$6.06 million and \$5.48 million annually, respectively, assuming current landings have fully recovered from the significant negative impacts of the 2017 hurricane season and the COVID-19 pandemic. If fully recovered from those events, the average small commercial fishing business in Puerto Rico and the U.S. Virgin Islands has annual revenues of \$7,472 and \$21,077, respectively. Whether there has been a full recovery or not, all commercial fishing businesses in Puerto Rico, St. Croix, and St. Thomas and St. John are identified to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

Action 1 of Framework Amendment 1 would update the OFLs, ABCs, and ACLs for spiny lobster in the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas and St. John FMP. The magnitude of the impact of this action is dependent on Action 2, which would revise the sequence of landings data used to compare to the ACLs for determining whether the AM for the spiny lobster stock under each FMP has been triggered. It would not change the process for applying an AM in Puerto Rico, St. Croix, and St. Thomas and St. John.

Under this proposed rule and Framework Amendment 1, the average of the most recent 3 years of available spiny lobster landings, e.g., 2019-2021, as estimated by NMFS and based on best scientific information available, would be compared to the average of the ACLs for those same years to determine if there has been an exceedance that triggers the AM.

Data on the costs and profits of the small businesses directly regulated by this proposed rule are not collected. However, the estimates of annual revenue losses and the percentages of annual total revenues that those losses represent offer insight into if the proposed rule could significantly reduce profits.

Puerto Rico

NMFS uses spiny lobster landings in Puerto Rico from

2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in Puerto Rico is 527,232 lb (239,148 kg), and no 3-year average or single year of those landings of spiny lobster exceeds the baseline ACL. Therefore, NMFS expects there would be no exceedance of the ACL and there would be no impacts on small businesses in Puerto Rico under the status quo.

The highest and lowest 3 years of spiny lobster landings in Puerto Rico from 2012 through 2019 are used to evaluate a range of the impact of the proposed rule from 2023 through 2027. The average of the highest 3 years of landings is 486,343 lb (220,601 kg), which is greater than the proposed moving 3-year average of ACLs for each year from 2023 through 2027. Because the estimate of maximum average landings is greater than the proposed moving 3-year average of ACLs, the AM would be triggered each year from 2023 through 2027. That average of the highest 3 years of landings is also greater than the proposed ACL for each year from 2023 through 2027, and the difference is the ACL overage of landings, which from 2023 through 2027 would range from 117,030 to 119,378 lb (53,084 to 54,149 kg) and average 118,908 lb (53,936 kg) annually. If the AM was triggered, the length of each spiny lobster fishing season in Federal waters off Puerto Rico would be reduced to

eliminate the annual ACL overage of landings, unless NMFS determined that the best scientific information available indicated otherwise. The average price of spiny lobster is estimated to be \$7.17 per pound. Over the 5-year period from 2023 through 2027, the average annual impact to all small businesses combined would range from \$0 to a loss of annual revenues totaling \$734,731. When that total annual impact is divided equally across the 378 (46.6 percent of 811) small businesses that may be directly affected by this action, the average small business would incur an average decrease in annual revenue of \$1,944, which represents 26.0 percent of the average annual total revenue of these small businesses. Note that the significance of this impact is based on the assumptions that spiny lobster landings have fully recovered from the adverse impacts of both the 2017 hurricane season and COVID-19 pandemic and that all spiny lobster landings in Puerto Rico are harvested from the EEZ. The maximum impact would be less if spiny lobster landings have not fully recovered to pre-2017 levels or if spiny lobster is harvested from both Federal and territorial waters. If landings from 2023 through 2027 remain on pace with the average of the lowest 3 years of landings, rather than the highest, the estimate of average landings would be less than the moving 3-year average of ACLs. In that case, there would be no exceedance of the ACL and no impact on

small businesses.

St. Croix

NMFS uses spiny lobster landings in St. Croix from 2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in St. Croix is 197,528 lb (89,597 kg), and during the 8-year period, annual landings ranged from 10,970 to 87,073 lb (4,976 to 39,496 kg). Consequently, NMFS expects that from 2023 through 2027 baseline landings would be less than the baseline ACL. In that case, there would be no exceedance of the ACL and no impact on small businesses in St. Croix under the status quo.

The highest and lowest 3 years of landings in St. Croix from 2012 through 2019 are used to evaluate a range of the impact from 2023 through 2027. The average of the highest 3 years of landings is 63,811 lb (28,944 kg) and the lowest 3 years of landings is 17,628 lb (7,996 kg), and both of those landings averages are lower than the proposed 3-year moving average of ACLs. Consequently, NMFS expects there would be no exceedance of the ACL and there would be no impact on small commercial fishing businesses of St. Croix.

St. Thomas and St. John

NMFS uses spiny lobster landings in St. Thomas and St.

John from 2012 through 2019 to estimate the impacts because those were the most recent landings data available at the time of the analysis. The baseline ACL of spiny lobster in St. Thomas and St. John is 209,201 lb (94,892 kg), and from 2012 through 2019, annual landings never exceeded 121,695 lb (55,200 kg). Therefore, NMFS expects there would be no exceedance of the ACL and no impact on small businesses in St. Thomas and St. John under the status quo.

The highest and lowest 3-year averages of spiny lobster landings in St. Thomas and St. John from 2012 through 2019 are used to evaluate a range of the impact from 2023 through 2027 under the proposed rule. The highest 3-year average is 107,804 lb (48,899 kg) and the lowest 3-year average is 84,793 lb (38,461 kg). The estimate of maximum average landings in 2023 (107,804 lb (48,899 kg)) is greater than the proposed 3-year moving average ACL (104,199 lb (47,264 kg)) for that year, but the estimate of maximum average landings in 2024 and thereafter is less than the proposed 3-year moving average ACL in 2024 and thereafter. Consequently, if the estimate of maximum average landings were to occur, the AM would be triggered in 2023, but not thereafter. The proposed ACL in 2023 (142,636 lb (64,699 kg)), however, would be greater than that maximum landings estimate (107,804 lb (48,899 kg)). Because there would be no (zero) overage estimate, and no

reduction in the fishing season, and no impact on small businesses of St. Thomas and St. John is expected.

If annual landings from 2023 through 2027 in St. Thomas and St. John are better represented by the lowest, 3-year average of landings from 2012 through 2019, rather than the highest, the estimate of annual landings would be less than the proposed ACL for each year. There would be no exceedance of the ACL, no application of the AM, and no impact on small businesses in Thomas and St. John.

Table 1 provides a summary of estimated impacts to small businesses directly regulated by the proposed rule in the near term.

Table 1 -- Summary of average annual adverse impacts by island area by action per small business that harvests spiny lobster, 2023 - 2027

Action	Brief Description	Puerto Rico	St. Croix	St. Thomas & St. John
1	Update OFLs, ABCs, & ACLs	Impact dependent on Action 2		
2	Revise sequence of landings data for overage determination	\$0 to \$1,944 per small business (0 to 26.0 percent of average annual	\$0 per small business	\$0 per small business

		revenue for 46.6 percent of active small commercial fishing businesses)		
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Given the extent to which the maximum average adverse impact could reduce the annual revenue to approximately 46.6 percent of Puerto Rico's small commercial fishing businesses by \$1,944, which represents 26.0 percent of the average annual revenue of those small businesses, NMFS determined that this proposed rule could have a significant adverse impact on a substantial number of small entities in Puerto Rico. That magnitude, however, is based on the assumptions that landings of spiny lobster have fully recovered from both the 2017 hurricane season and COVID-19 pandemic and all harvest of spiny lobster occurs in Federal waters. If landings have not fully recovered or if spiny lobster is harvested in both Federal and territorial waters, the maximum impact would be less. Moreover, the proposed rule may have no adverse economic impact on small businesses in Puerto Rico. The proposed rule would have no impact on small businesses in St. Croix or St. Thomas and St. John.

Considered, but not selected, alternatives to Action 1 discussed in Framework Amendment 1 would have higher or lower ACLs than the preferred alternative. Under Alternative 1 (no action), the OFL proxy, ABC, and ACL for spiny lobster would remain as specified under each island-based FMP. Alternatives 2 and 3 would update the management reference points for spiny lobster based on the accepted stock assessments. Alternative 2 would set declining OFLs and ABCs for 2021-2023 and includes three sub-alternatives (2a-2c) that would set the ACLs equal to a percentage of the ABC: Sub-alternative 2a would set the ACL equal to ABC; Sub-alternative 2b would set the ACL equal to 95 percent of the ABC; and Sub-alternative 2c would set the ACL equal to 90 percent of the ABC. Alternative 3 would set constant OFLs and ABCs for 2021-2023 and includes three sub-alternatives (3a-3c) that use the same reduction factors as the Alternative 2 sub-alternatives to set the ACLs equal to a percentage of the ABC.

Generally, the more the ACL is reduced, the larger the potential adverse impact because landings and dockside revenue from those landings are similarly reduced. Alternatives 2c and 3c would have larger potential maximum adverse impacts than the proposed action, while Alternatives 2a and 3a would have smaller potential maximum adverse impact than the preferred alternative.

Alternative 1 (no action) of Action 2 would compare a stepped progression of landings (starting with a single year of landings and then progressing to a 3-year average) to the ACL. A considered, but not selected, alternative to Action 2 (Alternative 3 in Framework Amendment 1) would have the estimate of landings based on the most recent single year's landings. Such an estimate is vulnerable to atypical fluctuations, and consequently, that alternative would likely result in more seasons being shortened than the proposed action. Hence, the adverse impact on small businesses, especially in Puerto Rico, would likely be greater under that unselected alternative than the proposed action.

List of Subjects in 50 CFR Part 622

Caribbean, Fisheries, Fishing, Spiny lobster.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: December 19, 2022.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.440, revise paragraph (c) to read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) *Spiny lobster*. (1) For the 2023 fishing year, the ACL is 369,313 lb (167,517 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 366,965 lb (166,452 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing

year, as specified in paragraph (c) (1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c) (2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

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3. In § 622.480, revise paragraph (c) to read as follows:

§ 622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(c) *Spiny lobster*. (1) For the 2023 fishing year, the ACL is 140,667 lb (63,805 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 120,830 lb (54,807 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS

will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing year, as specified in paragraph (c)(1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

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4. In § 622.515, revise paragraph (c) to read as follows:

§ 622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(c) *Spiny lobster*. (1) For the 2023 fishing year, the ACL is 142,636 lb (64,698 kg), round weight. For the 2024 and subsequent fishing years, the ACL is 126,089 lb (57,193 kg), round weight.

(2) At or near the beginning of the fishing year, NMFS will compare a three year average of available landings to the average ACLs effective during those same years, as described in the FMP. If NMFS estimates that average landings have exceeded the average ACLs, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent average landings from exceeding the ACL for that fishing year, as specified in paragraph (c)(1). If NMFS determines that a fishing season reduction is not necessary based on the best scientific information available, or if NMFS determines the ACL exceedance was due to improved data collection or monitoring rather than from increased landings, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing

year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

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